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4 MIRIAM GOLDBERG,  
5 Plaintiff,  
6 v.  
7 TEACHBK, INC., et al.,  
8 Defendants.

9 Case No. 24-cv-04525-LJC  
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13 **ORDER DENYING MOTION TO  
14 STRIKE**

15 Re: Dkt. No. 28  
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18 **I. INTRODUCTION**

19 Pending before the Court is a special Motion to Strike Plaintiff Miriam Goldberg's  
20 Complaint filed by Defendants Ilya Kiselev, Andrei Burtsev, and TeachBK, Inc. ECF No. 28.  
21 Defendants bring their motion pursuant to California law permitting the pre-trial dismissal of  
22 Strategic Lawsuits Against Public Participation ("SLAPPs"), that is, lawsuits "intended to deter  
23 ordinary people from exercising their political or legal rights or to punish them for doing so."  
24 *Makaeff v. Trump University, LLC*, 715 F.3d 254, 261 (9th Cir. 2013) (citations omitted). A  
25 hearing was held on November 12, 2024. Having considered the briefing and arguments, the Court  
26 **DENIES** Defendants' Motion to Strike to the extent it challenges the legal sufficiency of  
27 Plaintiff's Complaint.<sup>1</sup>

28 **II. BACKGROUND**

29 **A. Allegations in Plaintiff's Complaint**

30 Plaintiff Miriam Goldberg, professionally known as Marina Sokolovskaya, is the  
31 development director and intake manager for Modern Law Group, a U.S.-based immigration law  
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38 <sup>1</sup> The parties have consented to the jurisdiction of a magistrate judge for all purposes under 28  
U.S.C. § 636(c).

1 firm. ECF No. 1 (Compl.) ¶ 2.<sup>2</sup> Goldberg is a Russian émigré who came to the United States  
2 because of her opposition to Russian President Vladimir Putin, and she has since become a  
3 naturalized U.S. citizen. *Id.* She works with asylum seekers from former Soviet republics,  
4 including Russians facing persecution for opposing the Russian government and the war in  
5 Ukraine. *Id.* Her job responsibilities include posting “YouTube videos and Instagram posts and  
6 reels discussing immigration matters based on topics decided by her employer.” *Id.* Apart from her  
7 job at Modern Law Group, Goldberg volunteers to help locate missing persons and has made a  
8 documentary about this volunteer work. *Id.*

9 Defendants Ilya Kiselev and Andrei Burtsev “run and administer (1) the YouTube channel  
10 ‘TeachBK – Immigration’ located at [https://www.youtube.com/@TeachBK \[...\]](https://www.youtube.com/@TeachBK [...]), (2) various  
11 Telegram channels, and (3) the website teachbk.com, on which they offer help to Russians who  
12 are seeking to move to the United States.” Compl. ¶ 5. Defendants’ website “provides information  
13 on travel to Mexico, purchasing vehicles, preparing for asylum interviews, and recommendations  
14 to the two U.S.-based immigration lawyers who often appear on [their] YouTube Channel.” *Id.*  
15 Kiselev and Burtsev “incorporated this venture as TeachBK, Inc.,” and are TeachBK’s “sole  
16 owners and shareholders.” *Id.* ¶¶ 5-6. Defendants’ YouTube channel alone has over 100,000  
17 subscribers. *Id.* ¶ 14.

18 At some point during or prior to January 2023, Goldberg posted on one of Defendants’  
19 Telegram channels warning their subscribers not to buy fake immigration documents. Compl.  
20 ¶ 17. Defendants then began “posting attack videos” and “negative comments” about Goldberg on  
21 their social media channels. *Id.* Goldberg’s employer contacted Defendants and requested that they  
22 stop posting videos. *Id.* They briefly complied, and then resumed posting negative content  
23 regarding Goldberg. *Id.* ¶ 18. “Around eight months after the attacks began, and after Kiselev  
24 threatened” Goldberg with sexual violence on Facebook, Goldberg, deciding to “personally take  
25 action” against Defendants, researched Kiselev online and learned that he was involved in various  
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27 <sup>2</sup> For purposes of ruling on this motion, the Court accepts Goldberg’s allegations as if true.  
28 Nothing in this summary should be construed as resolving any issue of fact that might be disputed.

1 legal disputes in Russia. *Id.* She learned that he was being sued for defamation in Russia by  
2 Valeriy Katkov, a Russian former municipal deputy. *Id.* In September 2023, Goldberg contacted  
3 Katkov to learn about his lawsuit against Kiselev. *Id.* ¶¶ 18, 19. Goldberg alleges that Katkov was  
4 a supporter of Aleksey Navalny and that at the time she contacted him, he no longer worked for  
5 the Russian government. *Id.*

6 Defendants learned that Goldberg had contacted Katkov and began posting content on their  
7 social media channels claiming Goldberg was a Russian agent who was sending her office's  
8 clients' personal information to the Russian government. *Id.* ¶¶ 19-20. Goldberg claims that  
9 Defendants posted the following defamatory statements on their social media channels:

10 **1. September 7, 2023 Video**

11 Defendants posted a video to the TeachBK YouTube channel on September 7, 2023 falsely  
12 claiming Goldberg is "an agent of the Russian government who leaks information from  
13 prospective clients to the Russian Federation government apparatus." *Id.* ¶ 20. The video's cover  
14 photo depicts an image of Goldberg making a hand signal that signifies "murder" in Russia, next  
15 to an image of Vladimir Putin with his finger to his lips. *Id.* ¶ 22. The TeachBK YouTube channel  
16 and the TeachBK website include a summary of the video, stating:

17 Marina Sokolovskaya leaks personal data to a Russian deputy, who in  
18 turn is directly connected with Russia's security agencies. What case  
19 is currently being discussed in Russia, and who knows about it besides  
20 Marina and the intelligence services she works with? How ethical is  
21 it for Marina, who holds status in the US, to work with the authorities  
of a country she opposes? And how safe is it for those who come to  
America seeking political asylum? On what terms does Marina  
Sokolovskaya cooperate with Rubic in the US (Ekaterina Panova,  
Rubic.us)?<sup>3</sup>

22 *Id.* ¶ 24. In the video itself, a full translation of which is attached in its entirety to the Complaint at  
23 Exhibit 1, Kiselev makes the following statements about Plaintiff:

24 [G]iven that this person runs an immigration channel, calls herself an  
immigration consultant [...] communicates with you, takes your

25  
26 <sup>3</sup> Ekaterina Panova is allegedly the "owner of a Ukrainian news publication," Rubic, that is  
27 currently being sued by Aleksey Tovarian, a lawyer associated with Defendants, in an action in the  
Southern District of Florida. Compl. ¶ 42; see *Tovarian v. Rubic, LLC*, No. 24-cv-14037 (S.D.  
28 Fla.). She is referred to as both "Ekaterina Panova," and "Kateryna Panova." Compl. ¶ 42; ECF  
No. 31 at 8.

1 contact details [...] Where do these contact details go later? Where  
2 does the essence of the cases you see go, to which Russian  
3 authorities? Is it normal for a Russian citizen, being in the United  
4 States and working for an American attorney at the Modern Law  
Group, to receive protection from the American government and then  
provide personal data to the Russian authorities about people who  
immigrate to the United States?

5 *Id.* ¶ 25. Burtsev responds:

6 [W]hat kind of conspiracy could there be, what kind of contract  
7 conditions could there be, that is, what other immigrants could  
8 [Marina Sokolovskaya] she be sending there? Maybe it's all a  
9 streamlined situation where they say, Listen, we will help you, but  
10 you must provide information about everyone you find and know—  
11 people of interest, and maybe even call them by name—when they  
12 come to you, let us know, and we'll see if we are interested in this  
13 person or not. Oh, here's an interesting person! Oh, here's their case!  
14 Here's their face. When does he come to you? Oh, he has a bad case,  
15 right? Tell him his case is bad, and we will deport him. And we are  
16 waiting for him here.

17 *Id.* ¶ 26. Later in the video, Kiselev, commenting about Goldberg's communication with Katkov,  
18 states:

19 [T]here is some connection between Marina Sokolovskaya and the  
20 current Russian authorities, where there is a channel through which  
21 information goes in both directions. It means that the phone is  
22 answered, listened to, and then hung up. It means the phone is not  
23 thrown away when Sokolovskaya calls from the U.S. to Russia [...] I  
have a huge request to the FBI, CIA, foreign intelligence, and  
domestic intelligence of both countries to pay attention to this lady.  
How she violates all personal data laws, international and others,  
leaking all the information to a hostile state of one country or another?  
Maybe she is a double agent.

24 *Id.* ¶¶ 29-30; *id.* at 25-26. Burtsev responds:

25 [I]t turns out that there is a person in the U.S. who collaborates as an  
infiltrated agent from Russia and transmits this data [information  
from asylees] and also tries to influence the situation in such a way  
that the people whom the U.S. is protecting now should be deported.  
Maybe they want to collect some additional data to use it elsewhere  
for a different purpose.

26 *Id.* ¶ 38. The September 23, 2023 video has been viewed by "almost 8,000 people." *Id.* ¶ 40.

## 27 2. March 15, 2024 Video

28 Defendants posted another video on March 15, 2024, the summary of which states that Plaintiff and Ekatarina Panova were part of a "major espionage network" that the FBI was investigating. *Id.* ¶ 48 n.2. A full translation of this video is not included in the Complaint.

1                   **3. May 18, 2024 Video**

2                   Defendants posted an additional video in May 2024 titled “US citizens work with  
3                   Moscow / The Kremlin is online” on TeachBK’s YouTube channel. *Id.* ¶¶ 41-42. The video  
4                   includes a “doctored photo” of Goldberg and Ekaterina Panova in Russian military uniform above  
5                   text stating “U.S. citizens are leaking information about Russians.” *Id.* ¶ 42. A full translated  
6                   transcript of the video is attached to the Complaint. *Id.* at 26. Defendant Kiselev, discussing  
7                   Goldberg’s alleged connection with the Russian government, states:

8                   The question is how Marina Sokolovskaya, a US citizen, has such a  
9                   close connection with the Kuzminsky Court in Moscow. Despite the  
10                  fact that in her social networks she is clearly not a pro-Russian person.  
11                  She is a person who severely criticizes Russia, calling it “Rashka,”  
12                  calling everyone “Russcists,” [...] But at the same time, she has a  
13                  direct connection with a deputy from Moscow. Connections with  
14                  “Rubic” connections with Kharitonov from Great Britain, they are all  
15                  involved in some shady business, selling something to someone, to  
16                  poor immigrants, while using pseudonyms, and not even their real  
17                  names.

18                  *Id.* at 33. Burtsev then states:

19                  [H]ow do Marina Sokolovskaya and Ms. Ekaterina Panova have  
20                  direct access to the country's leadership in the form of deputies and  
21                  pro-Russian media in Moscow?

22                  *Id.*; *id.* ¶ 52. Kiselev, apparently warning his subscribers against using Goldberg’s immigration  
23                  services, adds:

24                  As for Marina Sokolovskaya [...] and all these wonderful friends,  
25                  these guys are engaged in specific criminal activities. They clearly  
26                  understand what they are doing and how they are doing it. Moreover,  
27                  we have complete evidence that Marina Sokolovskaya, who is not  
28                  Marina Sokolovskaya, and Ekaterina Panova have a clear connection  
                with Russia today. And they use this connection for communication,  
                both ways. And before you engage in immigration, before you turn to  
                these wonderful people, you need to think very carefully about where  
                your information might surface at any given moment. And what  
                consequences this might have for you.

29                  *Id.* at 34. The May video has been viewed by over 6,000 people. *Id.* ¶ 53.

30                   **4. Additional Statements on Social Media**

31                  In addition to the three videos described above, Defendants have made remarks about  
32                  Goldberg on social media, including an Instagram post stating that Goldberg is part of “a unified  
33                  and connected fraudulent scheme to send the personal information of asylum seekers to

1 Moscow.” *Id.* ¶¶ 48-49.

2           **5. Plaintiff Disputes the Truth of Defendants’ Statements and Alleges that**  
3           **Kiselev knew that the Statements Were False**

4           Goldberg asserts that she is neither a Russian spy nor agent. *Id.* ¶ 44. Further, she denies  
5           that she is affiliated with the Russian government and alleges that she “maintains no contacts with  
6           the Russian government or any of its agents,” and “has not shared any information about any  
7           person to the Russian government.” *Id.* ¶¶ 44-45. She alleges that Defendants knew the statements  
8           made on their social media channels to thousands of followers were false and injurious, and made  
9           them to “bolster” their business. *Id.* ¶ 62. She asserts that Kiselev knew that Katkov ceased  
10          working for the Russian government by August 2022 and that he was not affiliated with the  
11          Russian government by the time she contacted Katkov in September 2023. *Id.* ¶¶ 32, 35, 37. She  
12          alleges that Defendants’ statements about her “resulted in hate mail and negative comments  
13          online,” lost her law firm clients, and caused her “emotional and reputational harm[.]” *Id.* ¶¶ 62-  
14          63, 81.

15           **B. Procedural History**

16           Goldberg sued Defendants for defamation *per se* and *per quod* on July 26, 2024. Compl.  
17          at 1. Defendants filed the instant anti-SLAPP Motion to Strike Plaintiff’s Complaint, claiming that  
18          the lawsuit is “aimed at chilling Defendants’ right of petition or free speech in connection with  
19          issues relating to immigration, asylum, and related litigation.” ECF No. 28 at 9. With their motion,  
20          Defendants filed declarations by Kiselev, Burtsev, defense counsel Alla Vorobets, and Pavel  
21          Ledestimminov, a Russian asylee who attests that Goldberg shared his personal information online  
22          without permission. ECF Nos. 28-1, 28-2, 28-3, 28-4. The declarations attest to Goldberg’s role as  
23          a blogger and journalist with over 30,000 followers on social media and characterize Katkov as a  
24          “pro-Putin Russian politician” who, while no longer holding an official political position, still has  
25          “political connections to the present Russian government” and “remains an integral part of the pro-  
26          Putin propaganda machine.” ECF Nos. 28-4 ¶¶ 8-9, 11; 28-2 ¶ 26; 28-1 ¶¶ 5-6.

27           In spite of the filed declarations, at the hearing, Defendants informed the Court that their  
28          anti-SLAPP Motion challenges the legal sufficiency of Goldberg’s claims only, and therefore they

1 conceded that this Court could not consider such evidence in ruling on the motion. Defendants  
2 conceded that at this stage in the proceedings, given that they had not conducted discovery, the  
3 Court may only consider the allegations in the Complaint to resolve such a motion. The legal  
4 standard that applies to this motion, which is set forth below, makes clear that Defendants made  
5 sound concessions.

6 **III. LEGAL STANDARD**

7 “California law provides for the pre-trial dismissal of certain actions, known as Strategic  
8 Lawsuits Against Public Participation, or SLAPPs, that masquerade as ordinary lawsuits but are  
9 intended to deter ordinary people from exercising their political or legal rights or to punish them  
10 for doing so.” *Makaeff*, 715 F.3d at 261 (citations omitted). The Ninth Circuit has held that aspects  
11 of California’s anti-SLAPP statute, specifically the availability of the special motion to strike and  
12 “the availability of fees and costs,” apply in federal diversity actions. *CoreCivic, Inc. v. Candide*  
13 *Group, LLC*, 56 F.4th 1136, 1143 (9th Cir. 2022); *Metabolife Int’l, Inc. v. Wornick*, 264 F.3d 832,  
14 846 (9th Cir. 2001).

15 California’s anti-SLAPP statute establishes:

16 A cause of action against a person arising from any act of that person  
17 in furtherance of that person’s right of petition or free speech under  
18 the United States or California Constitution in connection with a  
19 public issue shall be subject to a special motion to strike, unless the  
20 court determines that the plaintiff has established that there is a  
21 probability that the plaintiff will prevail on the claim.

22 Cal. Civ. Proc. Code §425.16(b)(1). Applying section 425.16(b)(1), courts employ a two-step test  
23 in evaluating whether to grant a defendant’s anti-SLAPP motion. First, the moving defendant must  
24 make a “prima facie showing that the plaintiff’s suit arises from an act in furtherance of the  
25 defendant’s constitutional right to free speech.” *Makaeff*, 715 F.3d at 261. “At step one, a court  
26 primarily reviews the complaint, but also papers filed in opposition to the motion to the extent that  
27 they might give meaning to the words in the complaint.” *Mandel v. Hafermann*, 503 F. Supp. 3d  
28 946, 960–61 (N.D. Cal. 2020) (citations omitted). If the court finds that the defendant has made a  
prima facie showing that plaintiff’s suit arises from conduct in furtherance of the defendant’s free  
speech rights, at the second step, the burden then shifts to the plaintiff “to establish a reasonable

1 probability that it will prevail on its claim.” *Makaeff*, 715 F.3d at 261.

2 In state court, a claim must be dismissed if the “plaintiff presents an insufficient legal basis  
3 for it, or if, on the basis of the facts shown by the plaintiff, ‘no reasonable jury could find for the  
4 plaintiff.’” *Id.* (quoting *Metabolife v. Wornick*, 264 F.3d at 840). This approach, however,  
5 potentially runs afoul of the Federal Rules of Civil Procedure as it permits the dismissal of claims  
6 for factual insufficiency before discovery has been conducted. The Ninth Circuit, therefore, has  
7 crafted separate procedures for ruling on anti-SLAPP motions that challenge legal deficiencies of  
8 a claim and those that challenge factual deficiencies of a claim:

9 [W]hen an anti-SLAPP motion to strike challenges only the legal  
10 sufficiency of a claim, a district court should apply the Federal Rule  
11 of Civil Procedure 12(b)(6) standard and consider whether a claim is  
12 properly stated. And, on the other hand, when an anti-SLAPP motion  
13 to strike challenges the factual sufficiency of a claim, then the Federal  
14 Rule of Civil Procedure 56 standard will apply. But in such a case,  
discovery must be allowed, with opportunities to supplement  
evidence based on the factual challenges, before any decision is made  
by the court. A contrary reading of these anti-SLAPP provisions  
would lead to the stark collision of the state rules of procedure with  
the governing Federal Rules of Civil Procedure while in a federal  
district court.

15 *Planned Parenthood Fed'n of Am., Inc. v. Ctr. for Med. Progress*, 890 F.3d 828, 834 (9th Cir.  
16 2018), amended, 897 F.3d 1224 (9th Cir. 2018).

17 “Under the familiar [Rule 12(b)(6)] plausibility pleading analysis, ‘a complaint must  
18 contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its  
19 face’” to survive an anti-SLAPP motion. *CoreCivic*, 46 F.4th at 1143 (quoting *Ashcroft v. Iqbal*,  
20 556 U.S. 662, 678 (2009)). As for a 12(b)(6) motion, federal courts ruling on anti-SLAPP motions  
21 challenging the legal sufficiency of a claim “may consider the complaint in its entirety, as well as  
22 [...] documents incorporated into the complaint by reference, and matters of which a court may  
23 take judicial notice,” but not other extrinsic evidence. *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*,  
24 551 U.S. 308, 322 (2007); see *Herring Networks, Inc. v. Maddow*, 8 F.4th 1148, 1155-56 (9th Cir.  
25 2021).

#### 26 IV. ANALYSIS

27 As noted above, at the hearing, Defendants informed the Court that the parties had not  
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1 conducted discovery and submitted their motion as challenging the legal sufficiency of the  
2 Complaint only. The Court accordingly applies the 12(b)(6) standard in evaluating the sufficiency  
3 of Goldberg's Complaint. The Court accepts Goldberg's well-pleaded allegations as true and  
4 considers only the Complaint, attachments to the Complaint, and judicially noticeable information  
5 when ruling on this motion. The Court does not consider the declarations Defendants and  
6 Goldberg submitted in support of their briefing. Goldberg, for her part, does not dispute that  
7 Defendants have made a *prima facie* showing that her suit arises from an act in furtherance of  
8 Defendants' right to free speech. *See Makaeff*, 715 F.3d at 261; ECF No. 31 at 11 n.5. Thus, the  
9 Court's analysis below focuses on the second step of the test. The Court analyzes whether  
10 Goldberg alleges sufficient facts to state plausible claims for defamation *per se* and *per quod*. *See*  
11 *CoreCivic*, 46 F.4th at 1143.

12 "Pursuant to California law, defamation involves the intentional publication of a statement  
13 of fact which is false, unprivileged, and has a natural tendency to injure or which causes special  
14 damage." *Herring*, 8 F.4th at 1157 (quotations omitted); *see Makaeff*, 715 F.3d at 264; *Taus v.*  
15 *Loftus*, 40 Cal. 4th 683, 720, (2007) ("The tort of defamation involves (a) a publication that is (b)  
16 false, (c) defamatory, and (d) unprivileged, and that (e) has a natural tendency to injure or that  
17 causes special damage."). Statements are defamatory *per se* if the "defamatory meaning appears  
18 from the language itself without the necessity of explanation[.]" *Todd v. Lovecraft*, No. 19-cv-  
19 01751, 2020 WL 60199, at \*15 (N.D. Cal. Jan. 6, 2020). Statements are defamatory *per quod*  
20 when the "defamatory language [...] is not libelous on its face[;]" plaintiffs alleging defamation  
21 *per quod* must prove and plead special damages. *Id.*; *see Barker v. Fox & Assocs.*, 240 Cal. App.  
22 4th 333, 352 (2015). The allegedly defamatory statements must be "of and about" the party that  
23 claims they have been defamed. *See Barger v. Playboy Enters.*, 564 F. Supp. 1151, 1153 (N.D.  
24 Cal. 1983). When the plaintiff is a public figure, the plaintiff must also prove that the allegedly  
25 defamatory statements were made with actual malice. *N.Y. Times v. Sullivan*, 376 U.S. 254, 280  
26 (1964).

27 Defendants allege that Goldberg failed to state a claim for defamation because the  
28 statements at issue are not of and concerning Goldberg exclusively; that the statements are

1 nonactionable opinion and conjecture rather than assertion of fact; that Goldberg is a public figure  
2 and thus must show Defendants acted with malice, which she cannot do; and that the statements  
3 are protected by the common interest privilege, fair report privilege, litigation privilege, and the  
4 *Noerr-Pennington* doctrine.<sup>4</sup>

5 **A. The Allegedly Defamatory Statements Are “of and Concerning” Plaintiff**

6 Defendants argue that Goldberg’s action is based, in part, on claims that her employer  
7 Modern Law Group and her associate Ekaterina Panova were “effected by Defendants’ alleged  
8 statements.” ECF No. 28 at 27. Defendants request that the Court strike these claims as they are  
9 not “of and concerning” Goldberg. *Id.* It is not clear if Defendants are arguing that Goldberg  
10 claims Defendants made defamatory statements about the Modern Law Group and Panova or that  
11 the Modern Law Group and Panova were harmed by the statements Defendants made about  
12 Goldberg. *See id.* But either way, Defendants’ argument is misplaced. To prevail in a defamation  
13 claim, a plaintiff must show that they were the “direct object of” the defamatory statement. *Blatty*  
14 *v. New York Times Co.*, 42 Cal.3d 1033, 1033 (1986) (explaining that this “specific reference  
15 requirements” prevents those “who merely complain of nonspecific statements that they believe  
16 cause them some hurt” from establishing a claim). A plaintiff cannot prevail when the defamatory  
17 statements are not “of or concerning” them. *Id.* Although the Complaint references statements  
18 Defendants made about both Goldberg and Panova (Compl. ¶¶ 52-53) and Goldberg and her  
19 employer (*id.* ¶ 25), the statements are “of and concerning” Goldberg as well. Goldberg does not  
20 claim that she has been harmed by Defendants’ statements about her employer or Panova and does  
21 not bring this action on their behalf. Goldberg’s defamation claims are based on allegations that  
22 Defendants made defamatory statements “of and concerning” her, and furthermore she has alleged  
23 that she has suffered harm as a result of these statements. *Id.* ¶¶ 71, 80-81.

24 **B. The Statements are Not Non-Actionable Opinion**

25 Defendants further argue that Goldberg cannot prevail because the allegedly defamatory

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27 <sup>4</sup> Defendants do not dispute that the statements are intentional publications and have a “natural  
28 tendency to injure” or caused Goldberg special injury. *Herring*, 8 F.4th at 1157. The Court finds  
that Goldberg has alleged sufficient facts to satisfy these elements. *See* Compl. ¶¶ 20, 40-42, 71-  
73, 80-81.

1 statements are either “truthful assertions of fact or non-actionable statements of opinion.” ECF No.  
2 28 at 26.<sup>5</sup> “Because the challenged speech must be a statement of fact” for the plaintiff to prevail  
3 in a defamation action, “the threshold question in every defamation suit is whether a reasonable  
4 factfinder could conclude that the contested statement implies an assertion of objective fact.”  
5 *Herring*, 8 F.4th at 1157 (quotations omitted). Defendants assert that the statements at issue are  
6 “reflective” of their “subjective view on the issues under discussion,” and not assertions of fact  
7 that can be proved or disproved. ECF No. 28 at 26. Although Defendants seem to imply that all  
8 statements of opinion are protected, this is incorrect. “A statement of opinion may be actionable if  
9 it implies the allegation of undisclosed defamatory facts as the basis for the opinion.” *Wilbanks v.*  
10 *Wolk*, 121 Cal. App. 4th 883, 902–3 (2004). Similarly, couching statements as rhetorical questions  
11 and conjecture “may be actionable if they convey false and defamatory information.” *Id.* at 902. In  
12 determining if a statement is an assertion of fact or a nonactionable opinion or conjecture, courts  
13 examine the “totality of the circumstances” in which the statement was made and assess “(1)  
14 whether the general tenor of the entire work negates the impression that the defendant was  
15 asserting an objective fact, (2) whether the defendant used figurative or hyperbolic language that  
16 negates that impression, and (3) whether the statement in question is susceptible of being proved  
17 true or false.” *Herring*, 8 F.4th at 1157 (citations omitted).

18 While the tone of Defendants’ online posts is conversational and freewheeling, the purpose  
19 of their channel is to provide information and advice to individuals seeking asylum. Compl. ¶¶ 11-  
20 14; see ECF No. 28 at 10-11. The September 2023 YouTube video begins with Defendants  
21 discussing a new “free service” to help their subscribers evaluate different immigration judges in  
22 the United States; they characterize their discussion of Goldberg as warnings to their subscribers.  
23 Compl. at 23. Although they blend this advice with opinions and commentary, a reasonable  
24 factfinder could conclude that their advice is rooted in objective fact rather than speculation. See  
25 *Herring*, 8 F.4th at 1157. Defendants use hyperbolic language, as well as figurative imagery, in  
26

27 \_\_\_\_\_  
28 <sup>5</sup>Applying the 12(b)(6) standard, the Court accepts Plaintiff’s allegations as true and does not  
determine whether particular statements Defendants made are true or false, only assessing if the  
statements are of the type that could be proven true or false.

1 their videos and social media posts. *See* Compl. ¶¶ 22, 24-26, 29-30, 41-43. Defendants describe  
2 Goldberg as a “Russian bear in the U.S.”—figurative—and exclaim that she is violating “*all*  
3 personal data laws, international and others, leaking *all* the information to a hostile state”—  
4 hyperbole. *Id.* ¶¶ 30, 39 (emphasis added). But these metaphors and exaggerations do not negate  
5 the impression that Defendants are also asserting objective facts. *See Herring*, 8 F.4th at 1157.  
6 Moreover, “Where a communication is capable of two meanings, one defamatory and one not, it is  
7 for a jury, not a judge, to determine which meaning controls. [...] at this stage of the case, a court’s  
8 inquiry is not to determine if the communications may have an innocent meaning but rather to  
9 determine if the communication reasonably carries with it a defamatory meaning.” *Miller v.*  
10 *Sawant*, 18 F.4th 328, 333 (9th Cir. 2021) (citations omitted).

11 Lastly, the allegedly defamatory statements are susceptible to be proven true or false. For  
12 example, Defendants’ September 2023 video includes a summary stating that “Marina  
13 Sokolovskaya leaks personal data to a Russian deputy, who in turn is directly connected with  
14 Russia’s security agencies. What case is currently being discussed in Russia, and who knows  
15 about it besides Marina and the intelligence services she works with?” Compl. ¶ 24. The statement  
16 in the first sentence, that Goldberg “leaks personal data to a Russian deputy,” is susceptible to be  
17 proven true or false. While the second sentence is couched in conjecture, Defendants’ question  
18 implies an objective fact: Plaintiff leaks information about immigration cases to “intelligence  
19 services” in Russia. *Id.* Defendants’ other statements phrased as hypothetical questions and  
20 conjecture—“what kind of conspiracy could there be, what kind of contract conditions could  
21 there be, that is, what other immigrants could she be sending there?” (*Id.* ¶ 26); “How [does] she  
22 violate[] all personal data laws, international and others, leaking all the information to a hostile  
23 state of one country or another? Maybe she is a double agent.” (*Id.* ¶ 30)—likewise imply that  
24 Plaintiff leaks immigrants’ information to the Russian government. Whether or not Plaintiff sends  
25 information about asylees to the Russian government is “susceptible of being proved false” or  
26 true. *Weller v. American Broadcasting Co., Inc.*, 232 Cal. App. 3d 991, 1001 (1991).

27 Defendants argue that the statements here are akin to the statement at issue in *Herring*,  
28 where the Ninth Circuit found that a comment by Rachel Maddow made during an episode of her

1 talk show, that new channel One American News Network (OAN) “really literally is paid Russian  
2 propaganda” was non-actionable “rhetorical hyperbole.” 8 F.4th at 1160 (citations omitted); ECF  
3 No. 32 at 19-20. While there is an obvious similarity between the two (both allegedly defamatory  
4 statements accuse the plaintiffs of a connection with Russia), context makes the instant case  
5 distinguishable from *Herring*. In the segment about OAN, Maddow commented on an article  
6 published by *The Daily Beast* that reported that one of OAN’s employees was simultaneously  
7 employed by Sputnik News, a “Russian state-financed news organization.” *Herring*, 8 F.4th at  
8 1152. The article explained that a writer, Kristian Rouz, wrote as a freelancer for Sputnik News  
9 while he was employed at OAN, and that “Kremlin propaganda sometimes sneaks into Rouz’s  
10 segments on unrelated matters [at OAN].” *Id.* Commenting on the article during her show,  
11 Maddow remarked:

12 [A]mong the giblets the news gods dropped off their plates for us to  
13 eat off the floor today is the actual news that this super right wing  
14 news outlet that the president has repeatedly endorsed as a preferable  
15 alternative to Fox News .... We literally learned today that that outlet  
16 the president is promoting shares staff with the Kremlin.  
I mean, what? I mean, it's an easy thing to throw out, you know, like  
an epitaph in the Trump era, right? Hey, that looks like Russian  
propaganda. *In this case, the most obsequiously pro-Trump right wing*  
*news outlet in America really literally is paid Russian propaganda.*

17 *Id.* at 1153 (emphasis in original). Herring Networks, Inc. (*Herring*), which launched OAN, sued  
18 Maddow for defamation, claiming Maddow’s statement that “[OAN] really literally is paid  
19 Russian propaganda” was false because “OAN has never been paid or received a penny from  
20 Russia or the Russian government.” *Id.* Herring did not claim that the underlying article or  
21 Maddow’s statement that OAN’s employee was simultaneously employed at OAN and Sputnik  
22 News were false. Maddow described undisputed facts (that “OAN hired a Sputnik-employed  
23 writer”) and then added her own commentary: “it's an easy thing to throw out, you know, like an  
epitaph in the Trump era, right? Hey, that looks like Russian propaganda. In this case, the most  
24 obsequiously pro-Trump right wing news outlet in America really literally is paid Russian  
25 propaganda.” *Id.*

26  
27 The Ninth Circuit held that because Maddow provided her audience with the truthful,  
28 factual basis for her comment—that a member of OAN’s staff worked for a Russian news

organization while also working for OAN—her audience “could accept or reject Maddow’s opinion based on their own independent evaluation of the facts” presented. *Id.* at 1160 (citations omitted). “An ‘opinion based on fully disclosed facts can be punished only if the stated facts are themselves false and demeaning.’” *Id.* at 1159 (quoting *Standing Committee on Discipline of the United States District Court for the Central District of Cal. v. Yagman*, 55 F.3d 1430, 1439 (9th Cir. 1995)). In contrast, here Goldberg claims the alleged underlying facts are false and injurious: she asserts that Katkov did not work for the Russian government when she contacted him, and she “has not shared any information about any person to the Russian government[,]” is “not a Russian agent[,]” and does not leak information about her asylee cases. Compl. ¶¶ 32, 45, 57; see *Flowers v. Carville*, 310 F.3d 1118, 1129 (9th Cir. 2003) (explaining that when a “speaker outlines the factual basis for his conclusion, his statement is protected,” but this is predicated on “the factual basis itself [being] true. [...] A speaker can’t immunize a statement that implies false facts simply by couching it as an opinion based on those facts”). As in *Flowers*, Plaintiff disputes the truth of Defendants’ allegedly factual claims. Defendants’ additional commentary is not “rendered nondefamatory merely because it relies on another defamatory statement.” *Id.*

### C. Plaintiff’s Status as a Limited-Purpose Public Figure

Defendants argue that Goldberg is unlikely to prevail on her defamation claims because she is a public figure, and she will be unable to establish that Defendants acted with actual malice. Public figures must prove that the allegedly defamatory statements about them were made with “actual malice,” that is, “with knowledge that it was false or with reckless disregard of whether it was false or not.” *N.Y. Times v. Sullivan*, 376 U.S. 254, 279-80 (1964). For the foregoing reasons, the Court declines to find that Plaintiff is a public figure.<sup>6</sup>

For defamation purposes, a person can be a “general” public figure (who has “achieved such pervasive fame or notoriety that they become public figures for all purposes and in all contexts) or a “limited purpose” public figure who has “voluntarily” injected themself or been

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<sup>6</sup> Because the Court finds that the Complaint does not show that Goldberg is a public figure, it does not reach the question of whether Goldberg has shown Defendants made the allegedly defamatory statements with actual malice.

1 “drawn into a particular public controversy and thereby becomes a public figure for a limited  
2 range of issues.” *Cabrera v. Alam*, 197 Cal. App. 4th 1077, 1091 (2011) (citations omitted); *Gertz*  
3 *v. Robert Welch, Inc.*, 418 U.S. 323, 351 (1974). To determine if an individual is a “limited  
4 purpose public figure,” courts employ a three-step test: they determine if “a public controversy  
5 existed” when the allegedly defamatory statements were made, if the plaintiff “voluntarily injected  
6 itself into the controversy for the purpose of influencing the controversy’s ultimate resolution[,]”  
7 and if “the alleged defamation is related to the plaintiff’s participation in the controversy[.]”  
8 *Makaeff*, 715 F.3d at 266.

9 In evaluating whether Goldberg is a limited-purpose public figure at this stage in the  
10 litigation, the Court considers only the allegations in the Complaint, attachments to the Complaint,  
11 and information subject to judicial notice. *See Toufalian v. Orefice*, No. CV 19-7934, 2021 WL  
12 4353115, at \*4 (C.D. Cal. July 16, 2021) (“At the pleading stage, a determination of whether a  
13 plaintiff is a public figure is made from allegations in the complaint itself or from documents  
14 properly noticed.”). Defendants’ argument that Goldberg is a limited-purpose public figure  
15 focuses squarely on three paragraphs of Goldberg’s Complaint.<sup>7</sup> ECF No. 28 at 22-23. According  
16 to these allegations, Goldberg “posts online about immigration and asylum and is affiliated with a  
17 law firm,” she is the “face of her employer’s social media marketing toward Russian asylum  
18 seekers,” and she engages in volunteer efforts to search for missing persons. Compl. ¶¶ 16, 55, 62.  
19 Her Complaint further alleges that, separate from her work with the Modern Law Group, she has  
20 helped locate 120 missing individuals and made a documentary film about these volunteer efforts.  
21 Compl. ¶ 2.

22 The first step in evaluating if the target of alleged defamation is a limited-purpose public  
23 figure is to identify the existence of a specific public controversy that predates the alleged  
24 defamation. A matter is a public controversy if it is being “debated publicly”—as evidenced by  
25

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26 <sup>7</sup> Although Defendants also cite to Kiselev and Burtsev’s declarations in support of this argument,  
27 ECF No. 23 at 28, the Court does not consider this evidence at the current stage in the  
28 proceedings. *See Planned Parenthood*, 890 F.3d at 834 (“[W]hen an anti-SLAPP motion to strike  
challenges only the legal sufficiency of a claim, a district court should apply the Federal Rule of  
Civil Procedure 12(b)(6) standard”).

1 media coverage, widespread attention, or the like—and if its “outcome [...] affects the general  
2 public or some segment of it.” *Planet Aid, Inc. v. Reveal*, 44 F.4th 918, 925 (9th Cir. 2022);  
3 *Waldbaum v. Fairchild Publications, Inc.*, 627 F.2d 1287, 1297 (D.C. Cir. 1980) (“[A] public  
4 controversy is a dispute that in fact has received public attention because its ramifications will be  
5 felt by persons who are not direct participants.”). A topic being of “general interest [...] is not  
6 sufficient to create a public controversy.” *Makaeff*, 715 F.3d at 267; *Time, Inc. v. Firestone*, 424  
7 U.S. 448, 454 (1976) (holding that although a celebrity divorce “may be of interest to some  
8 portion of the reading public[,]” such type of “cause célèbre” is “not the sort of ‘public  
9 controversy’ referred to in *Gertz*”) (italics added); *Wisk Aero LLC v. Archer Aviation Inc.*, No. 21-  
10 cv-02450, 2023 WL 3919469, at \*11 (N.D. Cal. June 9, 2023) (finding no public controversy  
11 where the public was “interested” in aircraft technology but that “interest had not clearly ripened  
12 into an actual dispute”) (quotations omitted).

13 In their anti-SLAPP motion, Defendants argue that “Plaintiff is, at minimum, a limited  
14 public figure under California law by virtue of her interjection into the public interest issues of  
15 immigration and search for missing persons, both of which are important issues within the Slavic  
16 refugee community[.]”<sup>8</sup> ECF No. 28 at 22. At the hearing, Defendants’ counsel explained that the  
17 specific public controversy that Goldberg injected herself into is the issue of immigration  
18 consultants leaking information about Russian political asylees to the Russian government. The  
19 Court addresses these three topics turn.

20                   **a. Immigration**

21 Defendants first offer “immigration” as the public controversy that Goldberg has  
22 interjected herself into. ECF No. 28 at 22. The Court recognizes that immigration is a broad topic  
23 that is subject to widespread public debate and “affects the general public.” *Planet Aid*, 44 F.4th at  
24 925; Fed. R. Evid. 201(b) (“The court may judicially notice a fact that is not subject to reasonable

25 \_\_\_\_\_  
26 <sup>8</sup> To the extent that Defendants’ “at minimum” suggests that they are implying Goldberg could be  
27 an all-purpose public figure, the Court is unpersuaded. “Absent clear evidence of general fame or  
28 notoriety in the community, and pervasive involvement in the affairs of society,” an individual is  
not a public figure for all purposes. *Makaeff*, 715 F.3d at 265. None of the allegations in  
Goldberg’s Complaint support an inference that that she enjoys “general fame or notoriety.” *Id.*;  
*see Compl.*

1 dispute [...]"). The Court is skeptical, however, that such an expansive topic qualifies as a  
2 "particular public controversy" in the limited-purpose public figure analysis. *Waldbaum*, 627 F.2d  
3 at 1292 (emphasis added). Cases evaluating whether an individual is a limited-purpose public  
4 figure typically identify a discrete conflict or question rather than overarching social issue. See  
5 *Makaeff*, 715 F.3d at 267 (identifying the public controversy as the "specific question of Trump  
6 University's legitimacy"); *Planet Aid*, 44 F.4th 918 at 925 (identifying the "genuine public"  
7 controversies as Planet Aid and DAPP Malawi's misuse of charitable funds); *Resolute Forest v.  
8 Greenpeace*, 302 F. Supp. 3d 1005, 1017 (N.D. Cal. 2017) (identifying the public controversy as  
9 plaintiffs' record of "sustainable forestry practices" in the Boreal forest); *but see Mason v. Am.  
10 Prospect, Inc.*, No. CV 23-2238, 2024 WL 4345855, at \*14 (D.D.C. Sept. 30, 2024) (finding that  
11 "gender equity" was a public controversy under *Waldbaum*'s three-part limited-purpose public  
12 figure analysis); *Anti-Defamation League of B'nai B'rith v. Superior Ct.*, 67 Cal. App. 4th 1072,  
13 1089 (1998) (holding that "Israeli-Palestinian relations" constituted a public controversy).

14 Of course, the existence of a public controversy is only the first of three steps in the  
15 limited-purpose public figure analysis: for an individual to qualify as a limited-purpose public  
16 figure, they must have "thrust [themselves] into the vortex of [the] public issue" in an "attempt to  
17 influence its outcome." *Gertz*, 418 U.S. at 352; *Makaeff*, 715 F.3d at 267. The court in *Waldbaum*  
18 addressed the relationship between the scope of a public controversy and requisite role an  
19 individual must have or seek to have in it to be considered a limited-purpose public figure:

20 We do not believe it necessary to state that a court should define the  
21 controversy "narrowly" or "broadly." A narrow controversy will have  
22 fewer participants overall and thus fewer who meet the required level  
23 of involvement. A broad controversy will have more participants, but  
24 few can have the necessary impact. Indeed, a narrow controversy may  
25 be a phase of another, broader one, and a person playing a major role  
26 in the "subcontroversy" may have little influence on the larger  
27 questions or on other subcontroversies. In such an instance, the  
28 plaintiff would be a public figure if the defamation pertains to the  
*Waldbaum*, 627 F.2d at 1297, n.27.

Even if "immigration," referring to the movement of people to reside permanently in a

1 foreign country, qualifies as a public controversy, the Complaint does not establish that Goldberg  
 2 has “thrust [herself] to the forefront [...] in order to influence the resolution of the issues  
 3 involved.” *Gertz*, 418 U.S. at 345. As described in *Waldbaum*, where the controversy is a broadly  
 4 defined one with many participants, an individual must have a high “level of involvement” in the  
 5 controversy in order to “influence the resolution” of the controversy. *Id.*; *Waldbaum*, 627 F.2d at  
 6 1297, n.27. Goldberg’s Complaint states that she works at an immigration law firm “to help  
 7 asylum seekers” obtain asylum in the United States and, as part of that role, posts information  
 8 about seeking asylum online. Compl. ¶¶ 2, 16, 62. Given that “immigration” is an exceptionally  
 9 broad issue and Goldberg’s involvement is limited to posting online about specific sub-issues at  
 10 the direction of her employer, the Court cannot conclude that Goldberg “thrust [herself] to the  
 11 forefront” of the controversy “in order to influence resolution of the public issue” such that she  
 12 can be considered a limited-purpose public figure.<sup>9</sup> *Gertz*, 418 U.S. at 345; *Waldbaum, Inc.*, 627  
 13 F.2d at 1297; *Carver v. Bonds*, 135 Cal. App. 4th 328, 353 (2005). The Court therefore finds that  
 14 Goldberg is not a limited-purpose public figure in the context of immigration.<sup>10</sup>

#### 15                   **b.         The Search for Missing Persons**

16 Defendants separately argue Goldberg is a limited-purpose public figure relating to the  
 17 search for missing Russian, Ukrainian, and Belarusian dissidents. ECF No. 28 at 22. The Court  
 18 finds that Goldberg is not a limited-purpose public figure in this context, although for different  
 19 reasons. Goldberg’s Complaint alleges that she engaged in “active volunteer efforts to help find  
 20 missing persons,” has located and identified “more than 120 missing persons,” and created a  
 21 documentary film about these efforts. Compl. ¶¶ 2, 55. Assuming that a public controversy over  
 22 missing persons from these regions exists, the Court finds these allegations are sufficient to show  
 23

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24                   <sup>9</sup> To find otherwise would risk reanimating *Rosenbloom*. See *Rosenbloom v. Metromedia, Inc.*,  
 25 403 U.S. 29, 44, (1971) (extending the actual malice requirement to “all discussion and  
 26 communication involving matters of public or general concern, without regard to whether the  
 27 persons involved are famous or anonymous.”), abrogated by *Gertz*, 418 U.S. at 323.

28                   <sup>10</sup> The Court also doubts that, absent evidence that Goldberg was engaged in “large scale,  
 aggressive advertising,” her “social media marketing” for her employer meets “the requirement for  
 voluntarily participating in a controversy.” Compl. ¶ 62; *Makaeff*, 715 F.3d at 267; *Hu & Assocs., LLC v. New Life Senior Wellness Ctr., LLC*, No. LA CV16-03078, 2017 WL 10591754, at \*17  
 (C.D. Cal. July 7, 2017); see *Toufanian v. O'reffice*, 2021 WL 435115, at \*4.

1 that Goldberg “voluntarily injected [herself] into the controversy for the purpose of influencing”  
2 its outcome. *Makaeff*, 715 F.3d at 266.

3 Defendants’ argument fails at the third step of the limited-purpose public figure analysis.  
4 For a plaintiff to be a limited purpose public figure with respect to a particular controversy, the  
5 alleged defamation must be “related to the plaintiff’s participation in the controversy.” *Makaeff*,  
6 715 F.3d at 266. Goldberg claims to have been defamed by Defendants’ statements that she shares  
7 information about political asylees with the Russian government, including that she “leaks  
8 personal data to a Russian deputy, who in turn is directly connected with Russia’s security  
9 agencies,” provides “personal data to the Russian authorities about people who immigrate to the  
10 United States,” and that “it turns out that there is a person in the U.S. who collaborates as an  
11 infiltrated agent from Russia and transmits this data and also tries to influence the situation in such  
12 a way that the people whom the U.S. is protecting now should be deported.” Compl. ¶¶ 24, 25, 38.  
13 The alleged defamatory statements do not relate to Goldberg’s volunteer efforts searching for  
14 missing persons or publicity concerning these efforts. While Goldberg may have “invited public  
15 comment and debate” about the search for missing persons by making a documentary on the  
16 subject, it does not follow that she invited “public comment and debate” about leaking information  
17 to the Russian government from individuals in the U.S. *See Grishin v. Sulkess*, No. CV 18-10179,  
18 2019 WL 4418543, at \*6 (C.D. Cal. May 31, 2019). The Court accordingly finds that Plaintiff is  
19 not a limited purpose public figure related to the search for missing persons.

20 **c. Immigration Professionals Leaking Information to the Russian  
21 Government**

22 At the hearing, Defendants’ counsel clarified that the specific public controversy that  
23 Goldberg injected herself into is immigration consultants leaking information about Russian  
24 political asylees to the Russian government. The Court recognizes that this type of issue could  
25 conceivably be the subject of public discourse. However, the Complaint does not establish that  
26 this is an actual controversy that was the topic of public debate prior to the alleged defamation. In  
27 evaluating if an issue is being publicly debated, courts consider “if the press was covering the  
28 debate, reporting what people were saying and uncovering facts and theories to help the public

1 formulate some judgment” or if the topic is otherwise part of public discourse. *Waldbaum*, 627  
2 F.2d at 1297; *see Makaeff*, 715 F.3d at 267 (having “little difficulty in concluding that a public  
3 controversy existed over Trump University’s educational and business practices” where “Trump  
4 University’s legitimacy” was being debated on “public Internet message boards” and in a  
5 newspaper column); *Planet Aid v. Reveal*, 44 F.4th at 925 (“We have little difficulty in concluding  
6 that genuine public controversies existed [ . . . ] Long before [Defendants] published any articles  
7 about Planet Aid, countless news outlets published articles questioning Planet Aid’s integrity and  
8 examining the extent to which its charitable funds were being used for their intended purposes.”);  
9 *Nadel v. Regents of Univ. of Cal.*, 28 Cal.App.4th 1251, 1255, 1269-70 (1994) (finding that the  
10 planned development of a park in Berkeley, California, was a public controversy as there were  
11 “active and vocal opponents” of the development who spoke out against it at “city council  
12 meetings and public demonstrations” and the dispute was covered by the print media); *Resolute  
13 Forest Products, Inc.*, 302 F. Supp. 3d at 1017 (finding that plaintiffs’ forestry practices were a  
14 public controversy based on allegations of large scale demonstrations and petitions about the  
15 practices).

16 Here, the Complaint does not allege that there was any public debate or media coverage  
17 about immigration consultants leaking information to the Russian government before Defendants  
18 made their allegedly defamatory posts. *See Compl.* While Goldberg alleges that Defendants’  
19 videos were watched by thousands of viewers and resulted in public Facebook posts warning that  
20 she was a “Kremlin agent,” this controversy was created by Defendants and does not show that  
21 there was a broader, preexisting public debate about asylees’ information being leaked to the  
22 Russian government. *Compl.* ¶¶ 40, 54-55. The Court finds that allegations in the Complaint to not  
23 show that the issue of Russian asylees’ information being leaked to the Russian government was a  
24 genuine public controversy and declines to find that Goldberg is a limited-purpose public figure as  
25 to this topic.

26 The Court accordingly finds that Goldberg is not a limited-purpose public figure. This  
27 ruling is without prejudice and Defendants may renew this claim on summary judgment if they  
28 present evidence that there is an actual public controversy that “received public attention” and

1 “was being debated publicly” prior to Defendants’ statements, that Goldberg voluntarily injected  
2 herself “into the controversy for the purpose of influencing the controversy’s ultimate resolution,”  
3 and that the allegedly defamatory statements were “related to [Goldberg’s] participation in the  
4 controversy.” *Waldbaum*, 627 F.2d at 1297; *Planet Aid, Inc. v. Reveal*, 44 F.4th at 924.

5 **D. Defendants’ Asserted Privileges Are Inapplicable**

6 Defendants argue that Goldberg cannot prevail on her claims because their statements  
7 about her are protected by the common interest privilege, the fair comment privilege, the litigation  
8 privilege, and the *Noerr-Pennington* doctrine. *See* ECF No. 28 at 18-21. These privileges are  
9 inapplicable here.

10 **1. Common Interest Privilege**

11 Under California law, communications between people who share a common interest made  
12 to “protect or further” the common interest may be privileged. *Family Home & Finance Center,*  
13 *Inc. v. Federal Home Loan Mortg. Corp.*, 461 F. Supp. 2d 1188, 1197 (C.D. Cal. 2006). California  
14 Civil Code section 47(c)(1) specifies that publications made “In a communication, without malice,  
15 to a person interested therein, (1) by one who is also interested, or (2) by one who stands in such a  
16 relation to the person interested as to afford a reasonable ground for supposing the motive for the  
17 communication to be innocent, or (3) who is requested by the person interested to give the  
18 information” are privileged. The common-interest privilege codified by section 47(c)(1) “has been  
19 found to apply where the interest is something other than mere general or idle curiosity, such as  
20 where the parties to the communication share a contractual, business or similar relationship or the  
21 defendant is protecting his own pecuniary interest.” *Henley v. Jacobs*, No. C 18-2244, 2018 WL  
22 10604528, at \*3 (N.D. Cal. Dec. 21, 2018) (citations omitted). Such qualifying relationships  
23 include those “between partners, corporate officer and members of incorporated associates,”  
24 “between union members and union officers,” and extend to the relationships between “members  
25 of religious, fraternal, charitable, or other non-profit associations.” *Hicks v. Richard*, 39 Cal. App.  
26 5th 578, 586 (2019).

27 Defendants claim that their statements regarding Goldberg are protected by the common  
28 interest privilege because Defendants were “communicating with persons sharing a common

1 interest in U.S. immigration and asylum issues.” ECF No. 28 at 19. Goldberg counters that the  
2 common interest privilege is inapplicable here, as it only applies “to statements disseminated to a  
3 limited, interested group, not to statements posted online for anyone to access.” ECF No. 31 at 18.

4 As Plaintiff correctly notes, the common interest privilege does not apply to publications  
5 by the “news media to the general public,” even if the general public is interested in the topic. *Id.*;  
6 *Kashian v. Harriman*, 98 Cal. App. 4th 892, 914 (2002); *see generally, Brown v. Kelly*  
7 *Broadcasting Co.*, 48 Cal.3d 711, 736-37 (1989) (finding that the common interest privilege does  
8 not apply to publications made by news media). Although Defendants’ YouTube and Instagram  
9 accounts are not news media in the traditional sense, the reasoning that precludes the common  
10 interest privilege from applying to news publications is equally applicable here. Defendants’ social  
11 media channels are publicly available, their YouTube channel alone has over “100,000 followers  
12 and nine million views,” and the videos containing the allegedly defamatory statements have been  
13 viewed thousands of times. *See Compl.* ¶¶ 11, 14, 40. While the viewers and subscribers likely are  
14 interested in “immigration and asylum issues,” there is no indication that they have close  
15 professional, employment, or business relationships with Defendants of the type that would  
16 warrant application of the common interest privilege. ECF No. 28 at 1; *see Henley v. Jacobs*, 2018  
17 WL 10604528, at \*3.

18 In *Hicks v. Bradford*, the defendant posted defamatory statements on a neighborhood’s  
19 crime awareness Facebook page and then claimed the statements fell under the common interest  
20 privilege because he and other followers of the page shared a common interest in “crime  
21 awareness, prevention, and safety” in the neighborhood. The Central District found that such a  
22 “broad and generalized” common interest “is not the type of protectable interest that will support a  
23 common interest privilege defense.” No. CV 21-7330, 2022 WL 20689541, at \*6 (C.D. Cal. Dec.  
24 13, 2022). As in *Hicks*, although Defendants and their subscribers may share a common interest in  
25 immigration and asylum issues in the colloquial sense, this interest is too generalized to be  
26 protected by the common interest privilege. *Id.*; *see New Show Studios LLC v. Needle*, No. 14-cv-  
27 01250, 2014 WL 12495640, at \*14 (C.D. Cal. Dec. 29, 2014) (finding that although defendants  
28 and recipients of their online communication “likely shared a ‘common interest’ as that term is

1 used colloquially, they did not share the relationship necessary to render defendants' statements  
2 privileged within the meaning of section 47(c)"). Defendants' allegedly defamatory statements are  
3 not covered by the common interest privilege.

4 **2. Fair Report Privilege**

5 Defendants next assert that their statements are protected by the "Fair Comment Privilege"  
6 as codified by California Civil Code 47(d), ECF No. 28 at 19. Defendants appear to be referring to  
7 the fair report privilege under California Civil Code section 47(d), rather than the fair comment  
8 privilege. *See McClatchy Newspapers, Inc. v. Superior Court*, 189 Cal. App. 3d 961, 974-75  
9 (1987). "The fair report privilege confers an absolute privilege on any fair and true report in, or a  
10 communication to, a public journal" about judicial, legislative, or other public official  
11 proceedings. *Healthsmart Pac., Inc. v. Kabateck*, 7 Cal. App. 5th 416, 431 (2017) (quotations  
12 omitted); *see* Cal. Civ. Code § 47(d). For the privilege to apply, the allegedly defamatory  
13 statements must 1) report about the contents of a judicial or other public proceeding, 2) be a fair  
14 and accurate report of the proceeding, and 3) be published in or made to a public journal. *Id.*

15 Defendants allege that the fair comment privilege applies because Defendants discussed  
16 "the details of Kiselev's legal case in Russia," communications between Katkov and Kiselev's  
17 attorney, and "Plaintiff's conduct before and during [...] asylum hearings" in the videos that  
18 contain the allegedly defamatory statements. ECF No. 28 at 20. While the transcripts of the videos  
19 indicate that Defendants discussed Kiselev's ongoing case in Russia and that Katkov allegedly  
20 spoke to Kiselev's attorney after a court hearing, they did not report about what occurred in court  
21 proceedings. Compl. at 23-24 ("I [Kiselev] have attorneys working in Russia [...] we are in an  
22 active phase of these cases [...] this person [Katkov], after another court session, approached my  
23 defense and said the following: 'I suggest you close the case with Ilya Kiselev.'"). Nor do they  
24 report about any asylum proceedings. The fair report privilege protects reporters and their sources  
25 from liability for accurately reporting about what occurred in court or other official proceedings—  
26 it does not extend to all statements that acknowledge the existence of a court proceeding. *See Wisk*  
27 *Aero LLC v. Archer Aviation Inc.*, No. 21-CV-02450, 2023 WL 3919469, at \*6 (N.D. Cal. June 9,  
28 2023) (explaining that "the purpose of California law" is to provide "breathing room for

1 newspapers to explain the basis of a judicial proceeding without at the same time opening  
2 themselves up to exposure for defamation liability") (quoting *Dorsey v. Nat'l Enquirer, Inc.*, 973  
3 F.2d 1431, 1437 (9th Cir. 1992)).

4 But even if Defendants' discussion of Kiselev's court proceedings in Russia constitute  
5 communications about judicial or other official proceedings, the privilege is inapplicable because  
6 Plaintiff does not claim that Defendants' statements about judicial proceedings are defamatory.  
7 Rather, she claims that Defendants' statements that she leaks her clients' information to the  
8 Russian government and is a "double agent" are defamatory. *Id.*; see Compl. ¶¶ 20, 22, 24-27, 29-  
9 30, 38-39, 41-43, 48-53. Defendants' comments about these topics are plainly outside the scope of  
10 the fair report privilege.

### 11           **3.       Litigation Privilege**

12           Under California law, statements made "in a judicial proceeding, or in the initiation or  
13 course of any other proceeding authorized by law," including arbitration and mediation  
14 proceedings, are privileged. *Makaeff*, 715 F.3d at 264 (citing Cal. Civ. Code § 47(b)). "The  
15 privilege applies to any communication (1) made in judicial or quasi-judicial proceedings; (2) by  
16 litigants or other participants authorized by law; (3) to achieve the objects of the litigation; and (4)  
17 that have some connection or logical relation to the action." *Id.* (quoting *Silberg v. Anderson*, 50  
18 Cal.3d 205, 266 (1990)).

19           Defendants assert that their "allegedly defamatory comments had a direct relationship to  
20 Kiselev's and other Russian immigrants' asylum cases filed or pending before U.S. immigration  
21 courts" and thus are covered by the litigation privilege. ECF No. 28 at 21. This argument is  
22 unpersuasive. First, it is not enough that the defamatory statements were "related" to litigation;  
23 they must have been made during the course of judicial or quasi-judicial proceedings to "achieve  
24 the objects of the litigation." *Makaeff*, 715 F.3d at 264. Second, Goldberg does not allege that  
25 Defendants' comments about Kiselev's and other immigrants' asylum cases were defamatory, but  
26 rather that their statements regarding her alleged relationship with the Russian government were  
27 defamatory. See Compl. ¶¶ 25-42. As none of the allegedly defamatory statements were made in a  
28 judicial or quasi-judicial proceeding, the litigation privilege does not apply.

1                   **4. Noerr-Pennington Doctrine**

2                   Similarly, Defendants claim that the *Noerr-Pennington* doctrine applies because the  
3 alleged defamatory statements “directly address Defendants’ and/or other asylees and/or  
4 Defendants’ subscribers’ petitioning activity, particularly in the U.S. immigration courts.” ECF  
5 No. 28 at 21. The *Noerr-Pennington* doctrine “provides that those who petition any department of  
6 the government for redress are generally immune from statutory liability for their petitioning  
7 conduct.” *Kearney v. Foley & Lardner, LLP*, 590 F.3d 638, 643–44 (9th Cir. 2009) (citations  
8 omitted).<sup>11</sup> It appears that Defendants are claiming that their own and other asylees’ asylum  
9 applications are protected “petitioning activity.” The *Noerr-Pennington* doctrine is inapplicable  
10 here as Goldberg is seeking to hold Defendants liable for their statements about her alleged ties to  
11 the Russian government, not their conduct relating to their asylum applications or any petitioning  
12 activity.

13                   The Court accordingly finds that none of the privileges Defendants assert are applicable.  
14 As the Complaint does not contain factual allegations to support that Goldberg is a public figure  
15 and does contain sufficient factual allegations to support her claims for defamation *per se* and *per*  
16 *quod*, the Court finds that Goldberg has met her burden at the second step of the anti-SLAPP  
17 analysis and “stated a claim for defamation under California law.” *CoreCivic v. Candide*, 46 F.4th  
18 at 1143.

19                   **E. Request for Attorney’s Fees**

20                   California law specifies that “if the court finds that a special motion to strike is frivolous or  
21 is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney’s  
22 fees to a plaintiff prevailing on the motion, pursuant to Section 128.5.” Cal. Civ. Proc. Code §  
23 425.16(c)(1). Goldberg claims that Defendants’ motion is frivolous and requests an award of costs  
24 and attorney’s fees. ECF No. 21 at 24. While Defendants’ arguments were unavailing at this stage,  
25 their motion was not so “totally devoid of merit” as to be frivolous. *Moore v. Shaw*, 116 Cal. App.

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27 <sup>11</sup> Goldberg incorrectly claims that the *Noerr-Pennington* doctrine only applies in the antitrust  
28 context. ECF No. 31 at 22-23. *Kearney* clarifies that this not the case: while the doctrine “initially  
emerged in the antitrust context [...] The Supreme Court has since held that *Noerr-Pennington*  
principles apply with full force in other statutory contexts outside antitrust.” 590 F.3d at 644  
(citations omitted).

1 4th 182, 200 (2004). Goldberg's request for attorney's fees and costs is denied.

2 **V. CONCLUSION**

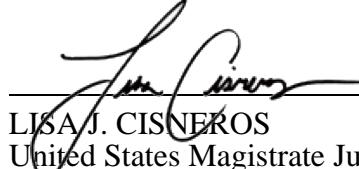
3 For the foregoing reasons, the Court DENIES Defendants' Motion to Strike and DENIES'

4 Goldberg's request for attorney's fees.

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6 **IT IS SO ORDERED.**

7 Dated: January 24, 2025

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Lisa J. CISNEROS  
United States Magistrate Judge

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